SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 776.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

AUGUST FERGER, THOMAS M. DUGAN, AND ROBERT H. RASCH.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 No. 1198.

In the District Court of the United States, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, *vs.* AUGUST FERGER, THOMAS M. DUGAN, and Robert H. Rasch.	Indictment for violation of act of August 26th, 1916.

TRANSCRIPT OF RECORD.

Be it remembered that on the thirtieth day of October, A. D. 1917, came the grand jurors of the United States of America, duly empaneled and sworn to inquire within and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment against the defendants in said cause, which said indictment is clothed in the words and figures following, to wit:

2 INDICTMENT.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Of the October term, in the year nineteen hundred and seventeen.

FIRST COUNT—ACT OF AUGUST 26, 1916.

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern Judicial District of Ohio, at the October term thereof, in the year nineteen hundred and seventeen, and inquiring for that division and district, upon their oaths and affirmations present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch on or about, to wit, the fourteenth day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge and counterfeit, and aid and assist in falsely making, forging, and counterfeiting a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish and aid and assist in utter-

ing and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

3

31-21 18 75'Y sets C 50SH

Form 28—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1903.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind Aug. 14 191_

from V. D. Springer, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Routed	If Routed
per	per

(Mail Address—Not for purpose of Delivery.)

Consigned to ORDER OF V. D. Springer

Destination, Cincinnati State of O. County of _____

Notify Ferger-Cudin Co

At Cinti State of O County of _____

Route, C. H. & D. Car Initials V. V. C. Car No. 11007

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection Allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

V. D. Springer Shipper V. B. Sheldon Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

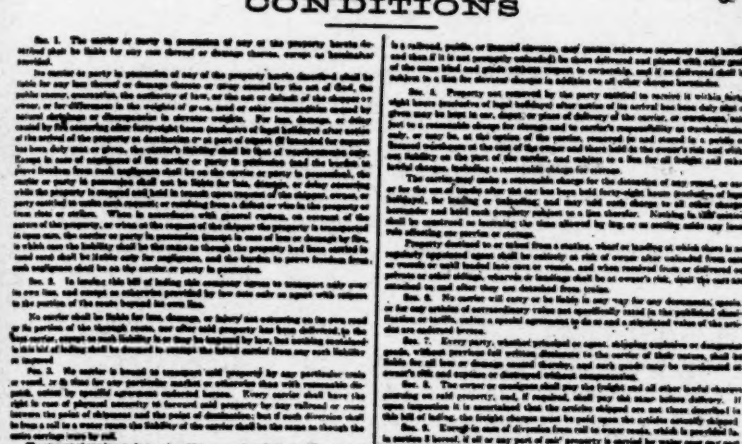
4

ENDORSEMENTS

W. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary



CONDITIONS

5 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

6 SECOND COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of

the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "First count" of this indictment, which said copy for brevity and further particularity is referred to in this count and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

7 THIRD COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

D-21 16 23 N cent C 68082 Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 14 191 7

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If ___ Tons 1st	If 1st Class	If 2d Class	If Rate 3d	If 3d Class	If Rate 4th	If Rate 5th	If 4th Class	If 5th Class	If 6th Class	If Special per	If Special per

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination Cinti State of O County of _____

Notify Ferger Grain Co.

At Cincinnati State of O County of _____

Route, C H & D Car Initials C H O Car No. 16904

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	60000		
	Allow Inspection			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Sheldon Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

8

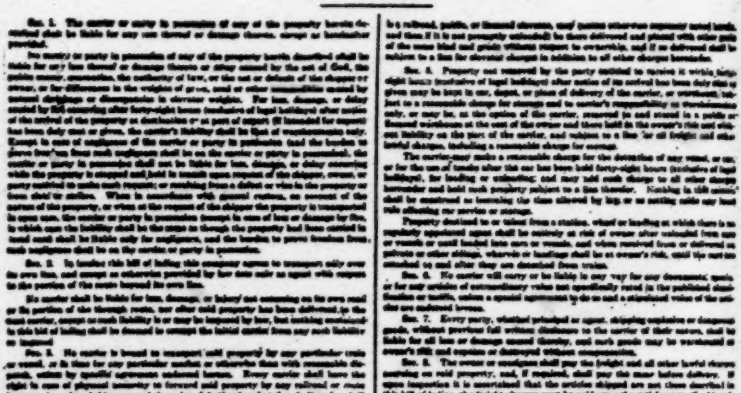
ENDORSEMENTS

W. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



9 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

10 FOURTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio, and within the jurisdiction of this court,

did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Third count" of this indictment, which said copy for brevity and further particularity is referred to in this count and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

11 FIFTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

11-21 M. 25 M sets C 88881 Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. AUG. 14 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Prepaid	If Collect	If 1st Class	If 2d Class	If Rate 3	If 4th Class	If Rate 5	If Rate 6	If 6th Class	If 7th Class	If 8th Class	If Special per _____	If Special per _____

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cincinnati State of O County of _____

Notify Ferger Grain Co

At Cincinnati State of O County of _____

Route, C. H. & D. Car Initials A T & F Car No. 21515

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper

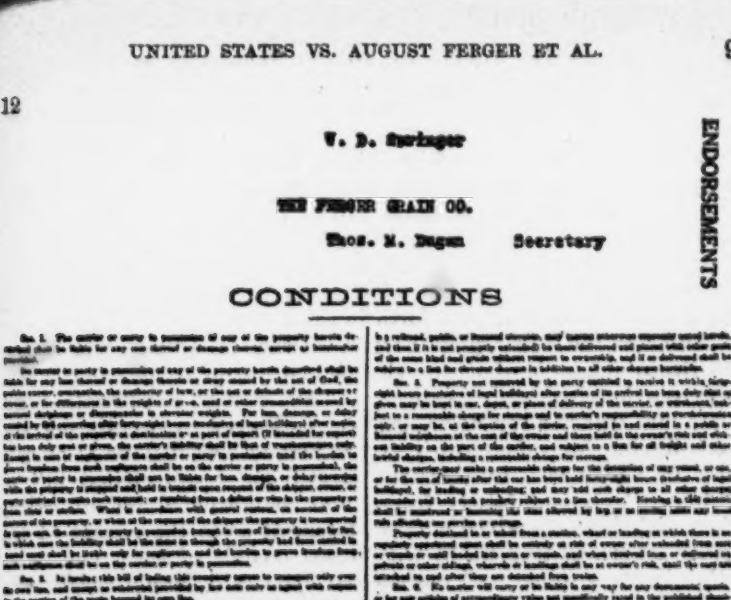
Per _____

W. R. Shalden Agent

Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

12



ENDORSEMENTS

V. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS

13 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

14 SIXTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of

this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Fifth count" of this indictment, which said copy for brevity and further particularity is referred to in this count and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

15 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

16 SEVENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908. Form 25—Sheet 1

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 14 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Routed	If Routed
per	per

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination Cincinnati State of O County of _____

Notify Ferger Grain Co.

At Cinti State of O County of _____

Route. C. H. & D. Car Initials Erie Car No. 86590

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	60000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Shalden Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

17

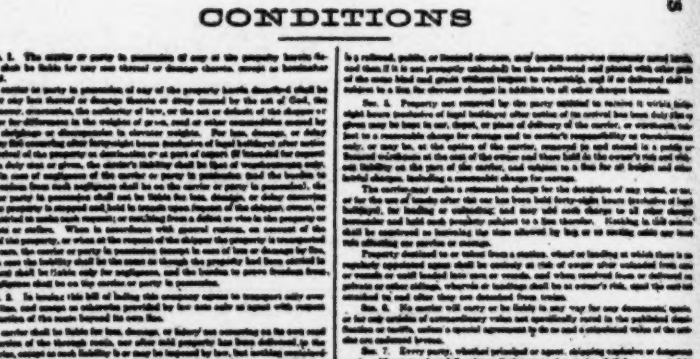
ENDORSEMENTS

W. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



18 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

19 EIGHTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 14th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of

this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Seventh count" of this indictment, which said copy for brevity and further particularity is referred to in this count and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

20 NINTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

41-21 1/2 M N cnlo C 0000 Form 35—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 757 of June 27, 1908.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No._____

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 15 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to the usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Prepaid	If Collect
per	per

If __ Class Not	If 1st Class	If 2d Class	If Rate 25	If 3d Class	If Rate 30	If Rate 35	If 4th Class	If 5th Class	If 6th Class

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cincinnati State of O County of _____

Notify Ferger Grain Co.

At Cinti State of O County of _____

Route, C. H. & D. Car Initials C O Car No. 4437

No. PACKAGES	DESCRIPTION OF ARTICLES, AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced

$_____

W. D. Springer Shipper W. E. Sheldon Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

21

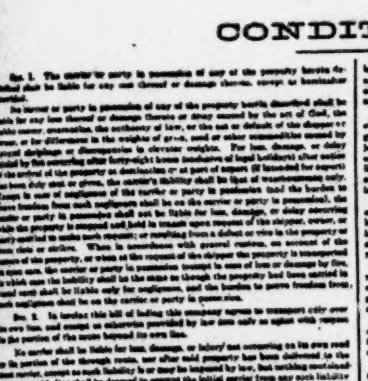
ENDORSEMENTS

W. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



22 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

23 TENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court,

did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely, forged, and counterfeited bill of lading is fully set forth in the "Ninth count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count,

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and *and* represented upon said falsely forged and counterfeited bill of lading. Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

24 ELEVENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio, and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

13-21 16 32 M Acts C 6832

Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No._____

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 15 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Routed	If Routed
per	per

If Prepaid	If 1st Class	If 2d Class	If Rate 3d	If 3d Class	If Rate 4th	If Rate 5th	If 4th Class	If 5th Class	If 6th Class

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cinti State of O County of _____

Notify Ferger Grain Co.

At Cinti State of O County of _____

Route, C. H. & D. Car Initials Erie Car No. 104237

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	90000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced

$_____

W. D. Springer Shipper W. E. Shelden Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

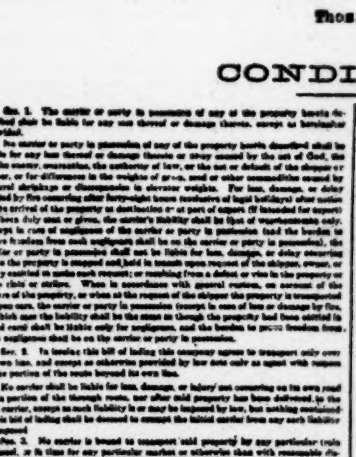
ENDORSEMENTS

W. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed or other commodities caused by natural shrinkage or decomposition in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if forwarded for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove it unless from apparent negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from risks or perils. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, to which case the liability shall be the same as though the property had been shipped in inclosed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In lieu of the liability imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability as imposed

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement endorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona-fide invoice price, if any, to the consignor, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been expressly stated in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

No claim for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. These rules are to make the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as the shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route grain is to be transported hereunder shall have the privilege, at its own cost and risk, of commingling the same for greater convenience in handling or forwarding, and shall not be held responsible for doubtless or unavoidable delays in procuring such cooperation. Grain in bulk consigned to a point where there is a railroad, public, or Forward elevator, and having otherwise expressly stated [illegible] and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or elsewhere, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held on the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel, car, or [illegible] for the use of trucks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading or both, and such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as increasing the time allowed by law or as making void any law rule affecting car service or storage.

Property destined to or taking from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings shall be at owner's risk, until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in the bill of lading not inconsistent with such provisions or the context, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of lakes, sea, or other waters, or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or to into or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an endorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

26 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

27 TWELFTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court,

did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Eleventh count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and
28 provided, and against the peace and dignity of the United States of America.

THIRTEENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

11-21 16 25 M 2512 C2008

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 757 of June 27, 1908. Form 25—Short

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 15 191?

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is to Cents per 100 Lbs.*

If ____ Tons 1st	If 1st Class	If 2d Class	If Rate 25	If 3d Class	If Rate 20	If Rate 18	If 4th Class	If 5th Class	If 9th Class	If Special per	If Special per

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cirvi State of O County of _____

Notify Ferger Grain Co.

At Cincinnati State of O County of _____

Route. C. H. & D. Car Initials N Y C Car No. 97565

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Shelden Agent

Per _____ Per _____

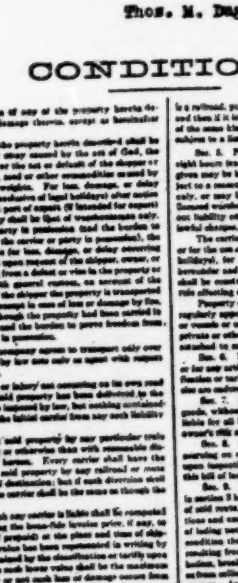
(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

ENDORSEMENTS

W. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary



CONDITIONS

30 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

31 FOURTEENTH COUNT—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 15th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to de-

fraud, utter and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Thirteenth count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

32 FIFTEENTH COUNT—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

Form 23—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1906.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 16 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Special per	If Special per

From (or)	If 1st Class	If 2d Class	If Rate 3	If 3d Class	If Rate 4	If Rate 5	If 4th Class	If 5th Class	If 6th Class

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF W. D. Springer

Destination, Cinti State of O County of _____

Notify Ferker Grain Co.

At Cincinnati State of O County of _____

Route C. H. & D. Car Initials H W Car No. 28517

No. packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	60000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Sheldon Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

33

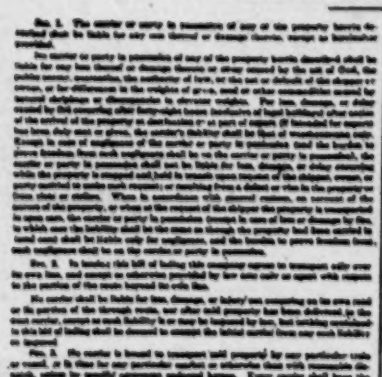
ENDORSEMENTS

W. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



34 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SIXTEENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of

this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Fifteenth count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of
35 lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading. Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

36 SEVENTEENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

11-21 10 2976 sets.-C 10021 Form 23—Sheet 7

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1906.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No. _____

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at Fountaintown, Ind. Aug. 16 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Prepaid	If Collect
per	per

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF W. D. Springer

Destination, Cincinnati State of O County of _____

Notify Ferger Gain Co.

At Cintt State of O County of _____

Route, C. H. & D. Car Initials Erie Car No. 109606

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Shelden Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

37

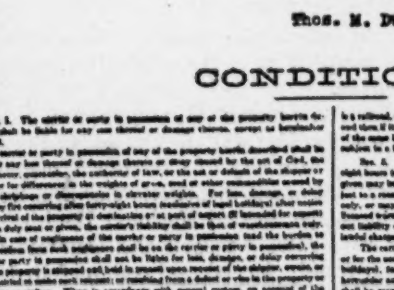
ENDORSEMENTS

V. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



38 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

EIGHTEENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court,

did unlawfully, knowingly, wilfully, and feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Seventeenth count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the
39 said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

NINETEENTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1919.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No._____

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 16 191 7

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Rate 1st Class	If 1st Class	If 2d Class	If Rate 3d	If 3d Class	If Rate 3d	If Rate 3d	If 4th Class	If 5th Class	If 6th Class	If Special per	If Special per

(Mail Address—Not for purpose of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cinti State of O County of _____

Notify Ferger Grain Co

at Cinti State of O County of _____

Route, C. H. & D. Car Initials C C C Car No. 43696

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

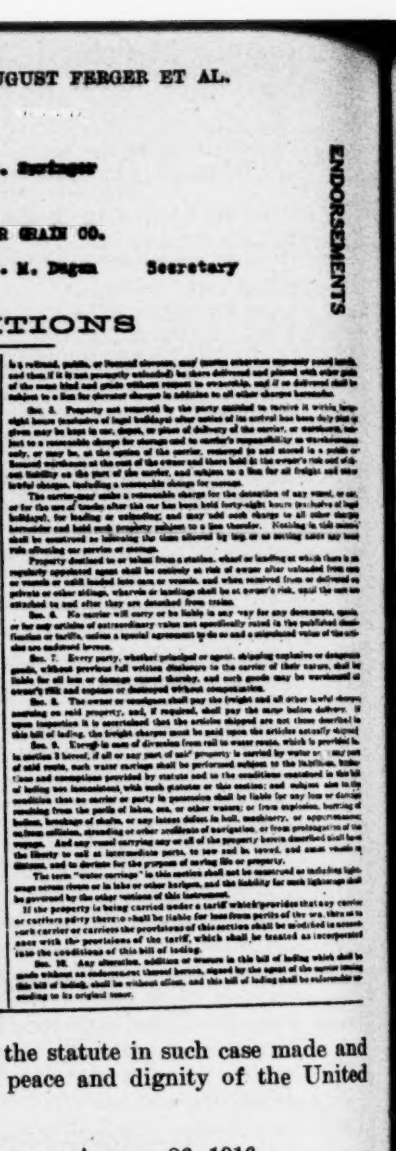
Charges Advanced:

$_____

W. D. Springer Shipper Y. E. Shelden Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)



V. B. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

ENDORSEMENTS

CONDITIONS

42 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

TWENTIETH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction

of this court, did unlawfully, knowingly, wilfully, and feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Nineteenth count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, and aid and assist in negotiating and transferring for value, to wit, to the Second National Bank of the
43 said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

TWENTY-FIRST COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

11-21 16 25 M Lots C 6825 Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1916.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

ORDER BILL OF LADING—ORIGINAL

Shipper's No._____

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

at Fountaintown, Ind. Aug. 16, 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

to _____ *is in Cents per 100 Lbs.*

If Prepaid	If Collect	If 1st Class	If 2d Class	If 3d Class	If 4th Class	If 5th Class	If 6th Class	If Specific	If Specific
								per_____	per_____

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF W. D. Springer

Destination, Cincinnati State of O County of _____

Notify Ferger Grain Co.

At Cinti State of _____ County of _____

Route, C. H. & D. Car Initials B & O Car No. 99016

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

W. D. Springer Shipper W. E. Sheldon Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

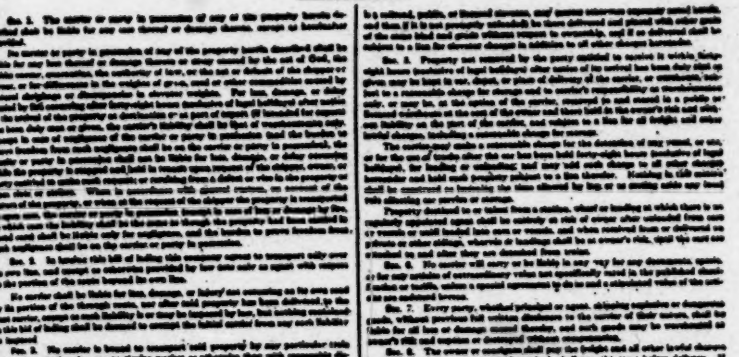
ENDORSEMENTS

V. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



46 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

TWENTY-SECOND COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did

unlawfully, knowingly, wilfully, and feloniously, and with intent to defraud, utter, and publish as true and genuine, a falsely forged and counterfeited bill of lading, then and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Twenty-first count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count,

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August, in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value and aid and assist in negotiating and transferring for value to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lad-
47 ing, which said falsely forged and counterfeited bill of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

TWENTY-THIRD COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, feloniously, and with intent to defraud, falsely make, forge, and counterfeit, and aid and assist in falsely making, forging, and counterfeiting, a certain bill of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing such falsely made, forged, and counterfeited bill of lading, then and there knowing the same to be falsely made, forged, and counterfeited, a copy of which said falsely made, forged, and counterfeited bill of lading is as follows, to wit:

Form 25—Sheet 1

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission by Order No. 737 of June 27, 1908.

The Cincinnati, Hamilton and Dayton Railway Company

JUDSON HARMON, RUFUS B. SMITH, Receivers

Shipper's No. _____

ORDER BILL OF LADING—ORIGINAL

Agent's No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at Fountaintown, Ind., Aug. 16 1917

from W. D. Springer the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof), and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly endorsed shall be required before the delivery of the property. Inspection of property covered by this Bill of Lading will not be permitted unless provided by law or unless permission is endorsed on this Original Bill of Lading or given in writing by the shipper.

The Rate of Freight from _____

for _____ *¢ in Cents per 100 Lbs.*										If Special per _____	If Special per _____
If ___Third 1st	If 1st Class	If 2d Class	If Rate 25	If 3d Class	If Rate 30	If Rate 32	If 4th Class	If 5th Class	If 6th Class		

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF W. D. Springer

Destination, Cinti State of O County of _____

Notify Ferger Grain Co.

At Cinti State of O County of _____

Route, C. H. & D. Car Initials C O Car No. 7471

No. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN
	Corn	80000		
	Inspection allowed			

If charges are to be prepaid, write or stamp here, "To be Prepaid"

_____

Received $_____ to apply in prepayment of the charges on the property described hereon.

_____ Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges Advanced

$_____

W. D. Springer Shipper W. E. Shelden Agent

Per _____ Per _____

(This Bill of Lading is to be signed by the Shipper and Agent of the shipping road.)

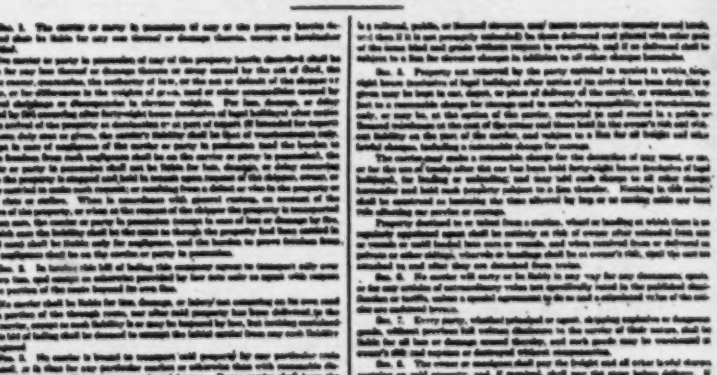
ENDORSEMENTS

W. D. Springer

THE FERGER GRAIN CO.

Thos. M. Dugan Secretary

CONDITIONS



50 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

TWENTY-FOURTH COUNT.—ACT OF AUGUST 26, 1916.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further present:

That August Ferger, Thomas M. Dugan, and Robert H. Rasch, on or about, to wit, the 16th day of August, in the year nineteen hundred and seventeen, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and within the Western Division of the Southern Judicial District of Ohio and within the jurisdiction of this court, did unlawfully, knowingly, wilfully, and feloniously,

and with intent to defraud, utter and publish as true and genuine, a falsely forged and counterfeited bill of lading, them and there knowing it to be falsely forged and counterfeited, a copy of which said falsely forged and counterfeited bill of lading is fully set forth in the "Twenty-third count" of this indictment, which said copy for brevity and further particularity is referred to in this count, and said copy of said bill of lading and all of it is herein adopted as if the same were fully repeated and set forth in this count.

And that the said August Ferger, Thomas M. Dugan, and Robert H. Rasch did, on or about, to wit, the 21st day of August in the year nineteen hundred and seventeen, in said city of Cincinnati, negotiate and transfer for value, to wit, to the Second National Bank of the said city of Cincinnati, said falsely forged and counterfeited bill of lading, which said falsely forged and counterfeited bill of lading then and there contained a false statement as
51 to the receipt of the goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.

The following endorsement appears on the back of the foregoing indictment:

"A true bill, J. R. Clevenger, foreman."

52 *Præcipe for capias ad respondendum.*

And afterwards, to wit: on the 31st day of October, A. D. 1917, came the district attorney for the Southern District of Ohio, and filed in the office of the clerk of said court a certain præcipe for capias ad respondendum for the defendants herein, which said præcipe is clothed in the words and figures following, to wit:

United States District Court, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA *vs.* AUGUST FERGER, THOMAS DUGAN, AND Robert H. Rasch.	No. 1198. Criminal.

To B. E. DILLEY,
Clerk of said court:

Please issue capiases in the above entitled cause for August Ferger, Thomas M. Dugan, and Robert H. Rasch, defendants in the above entitled cause of action, directed to M. Devanney, United

States marshal for the Southern District of Ohio, returnable according to law.

STUART R. BOLIN,
U. S. Attorney, Southern Dist. of Ohio.

All resident of Cincinnati, Ohio.

Capias ad respondendum issued.

And on the same day there was issued out of the office of the clerk of said court, our certain writ of capias ad respondendum directed to the marshal of said district and against the defendants herein, which said capias is clothed in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

The President of the United States of America, to the marshal of the Southern District of Ohio, greeting:

We command you to take August Ferger, Thomas M. Dugan, and Robert H. Rasch if they be found in your bailiwick, and them safely keep, so that you have their bodies before the judge of the District Court of the United States, within and for the Western
53 Division of the Southern District of Ohio, at the city of Cincinnati, in said district forthwith to answer unto the United States of America on an indictment for a violation of act of August 26, 1916, presented to said court against them, the said August Ferger, Thomas M. Dugan, and Robert H. Rasch, on the 30th day of October, A. D. 1917, by the grand jury of the United States within and for the Western Division of the Southern District of Ohio.

Hereof fail not, under the penalty of the law, and have then there this writ.

Witness the Honorable Howard C. Hollister, judge of the District Court of the United States, this 31st day of October, A. D. 1917, and in the 142nd year of the Independence of the United States of America.

Attest: B. E. DILLEY,
[SEAL.] *Clerk of the United States District Court, S. D. O.*
By HARRY F. RABE, *Deputy.*

Entry 12–425.

And on the same day an entry was made on the journal of said court in this cause, which said entry is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs. No. 1198.
AUGUST FERGER, THOMAS M. DUGAN, AND
Robert H. Rasch.

This day came the district attorney on behalf of the United States, and the defendant, August Ferger, having been arrested on a capias

ad respondendum issued upon the præcipe of the district attorney for this district, and having been arraigned at the bar of this court and the indictment herein read to him, for plea says he is "Not guilty," in manner and form as therein and thereby charged, and for his trial puts himself upon the country, and the district attorney doth the like.

It is thereupon ordered by the court that the said defendant,
54 August Ferger, enter into a bond in the sum of $5,000.00 with sureties to be approved by the court, judge, or clerk, conditioned for his appearance before the court from day to day as the court may direct and not depart the court without the leave thereof.

Thereupon, came the said defendant, August Ferger, and in open court produced E. A. Foy and William Harig as sureties, and upon examination of said sureties as to their qualifications the court accepted them as sureties on said bond, and in open court directed the clerk to prepare the bond in the sum named, with said E. A. Foy and William Harig as sureties; and it is ordered by the court that said defendant, August Ferger, be released upon executing said bond in the sum named with said parties as sureties.

Thereupon came said defendant, August Ferger, and executed said bond and was released from custody.

Entry 12–425.

And on the same day an entry was made on the journal of said court in this cause, which said entry is clothed in the words and figures following, to wit:

The United States of America *vs.* August Ferger, Thomas M. Dugan, and Robert H. Rasch.	No. 1198.

This day came the district attorney on behalf of the United States, and the defendant, Thomas M. Dugan, having been arrested on a capias ad respondendum issued upon the præcipe of the district attorney for this district, and having been arraigned at the bar of this court and the indictment herein read to him, for plea says he is "Not guilty," in manner and form as therein and thereby charged, and for his trial puts himself upon the country, and the district attorney doth the like.

It is thereupon ordered by the court that the said defendant,
Thomas M. Dugan, enter into a bond in the sum of $5,000.00
55 with sureties to be approved by the court, judge, or clerk, conditioned for his appearance before the court from day to day as the court may direct and not depart the court without the leave thereof.

Thereupon came the said defendant, Thomas M. Dugan, and in open court produced E. A. Foy and William Harig as sureties, and upon examination of said sureties as to their qualifications the court accepted them as sureties on said bond, and in open court directed the clerk to prepare the bond in the sum named, with said E. A. Foy and William Harig as sureties; and it is ordered by the court that said defendant, Thomas M. Dugan, be released upon executing said bond in the sum named, with said parties as sureties.

Thereupon came said defendant, Thomas M. Dugan, and executed said bond and was released from custody.

Entry 12-426.

And on the same day an entry was made on the journal of said court in this cause, which said entry is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
AUGUST FERGER, THOMAS M. DUGAN, AND Robert H. Rasch. } No. 1198.

This day came the district attorney on behalf of the United States, and the defendant, Robert H. Rasch, having been arrested on a capias ad respondendum issued upon the præcipe of the district attorney for this district, and having been arraigned at the bar of this court and the indictment herein read to him, for plea says he is "Not guilty," in manner and form as therein and thereby charged, and for his trial puts himself upon the country, and the district attorney doth the like.

It is thereupon ordered by the court that the said defendant, Robert H. Rasch, enter into a bond in the sum of $2,500.00 with sureties to be approved by the court, judge, or clerk, conditioned for his appearance before the court from day to day as the court may
56 direct and not depart the court without the leave thereof.

Thereupon came the said defendant, Robert H. Rasch, and in open court produced E. A. Foy and William Harig as sureties, and upon examination of said sureties as to their qualifications, the court accepted them as sureties on said bond, and in open court directed the clerk to prepare the bond in the sum named, with said E. A. Foy and William Harig as sureties; and it is ordered by the court that said defendant, Robert H. Rasch, be released upon executing said bond in the sum named, with said parties as sureties.

Thereupon came said defendant, Robert H. Rasch, and executed said bond and was released from custody.

Recognizance of August Ferger.

And on the same day the following recognizance of August Ferger was filed in the office of the clerk of said court in this cause, which

said recognizance is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

Be it remembered, that on this 31st day of October, A. D. 1917, before me, B. E. Dilley, clerk of the United States District Court, within and for the district aforesaid, duly appointed as such by the said court personally came August Ferger as principal and E. A. Foy and William Harig as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of five thousand ($5,000.00) dollars, to be levied on their goods and chattels, lands, and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said August Ferger shall personally appear before the District Court of the United States, in and for the district aforesaid, at Cincinnati, Ohio, from day to day as the court may direct, and then and there
57 to answer unto an indictment pending therein for a violation of the act of August 26, 1916, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

AUGUST FERGER. [SEAL.]
E. A. FOY. [SEAL.]
WM. HARIG. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

B. E. DILLEY,
Clerk U. S. District Court,
Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, E. A. Foy, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth one hundred twenty-five thousand ($125,000.00) dollars in real estate in my own name, situate in the county of Hamilton, in said district.

E. A. FOY.

Sworn to before me the 31st day of October, 1917.

[SEAL.]

HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, William Harig, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth

thirty-five thousand ($35,000.00) dollars in real estate in my own name, situate in the county of Hamilton in said district.

WM. HARIG.

Sworn to before me the 31st day of October, 1917.

[SEAL.] HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

58 *Recognizance of Thomas M. Dugan.*

And on the same day the following recognizance of Thomas M. Dugan was filed in the office of the clerk of said court in this cause, which said recognizance is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, ss:

Be it remembered, that on this 31st day of October, A. D. 1917, before me, B. E. Dilley, clerk of the United States District Court, within and for the district aforesaid, duly appointed as such by the said court personally came Thomas M. Dugan as principal and E. A. Foy and William Harig as sureties, and jointly and severally acknowledged themselves to owe the United States of America in the sum of five thousand ($5,000.00) dollars, to be levied on their goods and chattels, lands, and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said Thomas M. Dugan shall personally appear before the District Court of the United States, in and for the district aforesaid, at Cincinnati, Ohio, from day to day as the court may direct, and then and there to answer unto an indictment pending therein for a violation of the act of August 26, 1916, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

THOS. M. DUGAN. [SEAL.]
E. A. FOY. [SEAL.]
WM. HARIG. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.] B. E. DILLEY,
Clerk U. S. District Court,
Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

59 UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, E. A. Foy, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth one hun-

dred twenty-five thousand ($125,000.00) dollars in real estate in my own name, situate in the county of Hamilton in said district.

E. A. FOY.

Sworn to before me this 31st day of October, 1917.

[SEAL.] HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, William Harig, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth thirty-five thousand ($35,000.00) dollars in real estate in my own name, situate in the county of Hamilton in said district.

WM. HARIG.

Sworn to before me the 31st day of October, 1917.

[SEAL.] HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

Recognizance of Robert H. Rasch.

And on the same day the following recognizance of Robert H. Rasch was filed in the office of the clerk of said court, in this cause, which said recognizance is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

Be it remembered, that on this 31st day of October A. D. 1917, before me, B. E. Dilley, clerk of the United States District Court, within and for the district aforesaid, duly appointed as such by the said court, personally came Robert H. Rasch as principal and E. A. Foy and William Harig as sureties, and jointly and severally
60 acknowledged themselves to owe the United States of America in the sum of twenty-five hundred ($2,500.00) dollars, to be levied on their goods and chattels, lands, and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said Robert H. Rasch shall personally appear before the district court of the United States in and for the district aforesaid, at Cincinnati, Ohio, from day to day as the court may direct, and then and there to answer unto an indictment pending therein for a violation of the act of August 26, 1916, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virture.

ROBERT H. RASCH. [SEAL.]
E. A. FOY. [SEAL.]
WM. HARIG. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

B. E. DILLEY,
Clerk U. S. District Court,
Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

[SEAL.]

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, E. A. Foy, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth one hundred twenty-five thousand ($125,000.00) dollars in real estate in my own name, situate in the county of Hamilton, in said district.

E. A. FOY.

Sworn to before me the 31st day of October, 1917.

HARRY F. RABE,
Deputy Clerk, U. S. District Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

61 I, William Harig, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth thriyt-five thousand ($35,000.00) dollars in real estate in my own name, situate in the county of Hamilton, in said district.

WM. HARIG.

Sworn to before me the 31st day of October, 1917.

HARRY F. RABE.
Deputy Clerk, U. S. District Court, S. D. O.

Marshal's return on capias ad respondendum.

And afterwards, to wit: on the 10th day of November, A. D. 1917, came the marshal of said district, to whom said writ was in manner and form aforesaid directed, and returned the same into the office of the clerk of said court, with proceedings endorsed thereon, clothed in the words and figures following, to wit:

Received this writ at Cincinnati, Ohio, on October 31, 1917, and on the same day executed same by taking the bodies of the within named August Ferger, Thomas M. Dugan, and Robert H. Rasch into custody, and have now their bodies before court as within commanded.

The said defendants having been arraigned before court were released upon bond.

M. DEVANNEY, *U. S. Marshal, S. D. O.*
By E. R. KENDIG, *Deputy.*
By J. NORRISH, *Deputy.*

62 *Motion to quash indictment.*

And afterwards, to wit, on the 27th day of November, A. D. 1917, came the defendants, by their attorneys, and filed in the office of the clerk of said court a certain motion to quash the indictment and each

count thereof, in said cause, which said motion is clothed in the words and figures following, to wit:

District Court of United States, Southern District of Ohio, Western Division.

No. 1198.

UNITED STATES OF AMERICA, plaintiff, *vs.* AUGUST FERGER, THOMAS M. DUGAN, and Robert H. Rasch, defendants.	Motion of the defendants, August Ferger, Thomas M. Dugan, and Robert H. Rasch, to quash the indictment and each county thereof.

Now come the defendants, August Ferger, Thomas M. Dugan, and Robert H. Rasch, and move the court to quash this indictment returned against them, and each of them, and each count thereof, for the reason that said indictment and each count thereof does not state facts sufficient to charge an offense against the laws of the United States of America; and that said indictment and each count thereof is vague, indefinite and uncertain, and does not advise these defendants, and each of them, with what he is charged and of the facts claimed to constitute a crime under the laws of the United States, so as to enable them, and each of them, to prepare his defense thereto and are otherwise insufficient. The particulars of the said various defects in said indictment, and each count thereof being as follows, to wit:

FIRST COUNT.

63 The first count in this indictment is duplicitus, in that it charges two separate and distinct offenses.

First. It charges that defendants did falsely make, forge, and counterfeit, and aided and assisted in falsely making, forging, and counterfeiting a certain bill of lading. Further down in the same indictment it charges that defendants uttered and published and aided and assisted in uttering and publishing such falsely made, forged, and counterfeited bill of lading.

Second. Said count is indefinite and uncertain in that it does not state the person or persons who were to be defrauded.

Third. It does not state in what manner the bill of lading was falsely made, forged, and counterfeited.

Fourth. It does not state in what manner or how it was uttered and published.

Fifth. One can not tell from the reading of the indictment whether the bill of lading set out in the indictment is wholly fictitious or

whether it is a forged or counterfeit or a genuine bill of lading representing a real shipment.

SECOND COUNT.

This count is indefinite and uncertain in that it states that on the 14th day of August the defendants with intent to defraud uttered and published as true and genuine, a falsely made, forged, and counterfeit bill of lading, knowing the same to be falsely made, forged, and counterfeited, in the following particulars, to wit:

First. It does not state in what manner the bill of lading was falsely made, forged, and counterfeited.

Second. It does not state the person or persons who were to be defrauded.

Third. It doth not state and one can not tell from the reading of this count of the indictment whether the bill of lading set
64 out in the indictment is wholly fictitious or whether it is a forged or counterfeit of a genuine bill of lading representing an actual shipment.

Fourth. It does not state in what manner or how the said forged or counterfeit bill of lading was uttered and published or to whom it was uttered and published.

The second paragraph of this count states that the defendants on the 21st day of August negotiated and transferred for value to the Second National Bank of Cincinnati said falsely forged and counterfeited bill of lading, which falsely forged and counterfeited bill of lading contained a false statement as to the receipt of goods described therein, to wit, 80,000 pounds of corn, and as to other matters stated and represented upon said falsely forged and counterfeited bill of lading.

What the false statement was in relation to the 80,000 pounds of corn is not stated, and for that reason it is indefinite and uncertain. Whether the 80,000 pounds was in excess of the real amount or whether there was no corn at all, we do not know from the reading of this indictment, and are unable to prepare our defense in relation thereto.

What the other matters stated and represented upon said falsely forged and counterfeited bill of lading are, we can not even guess from the indictment.

It is so indefinite and lacks so much of the particularity that is required when a crime is attempted to be charged, that it would seem enough to merely suggest to the court that this was indefinite and uncertain without further argument.

The reasons assigned in the motion to quash the first count in this indictment are to apply and be considered as filed to each of the remaining odd counts of said indictment, as all of the odd counts in the indictment are in substance the same.

65 The reasons assigned in the motion to quash the second count in this indictment are to apply and be considered as

filed to each of the remaining even counts of said indictment, as all of the even counts in the indictment are in substance the same.

JOHN C. HERMANN,
SHERMAN T. MCPHERSON,
Attorneys for Defendants.

Demurrer to indictment.

And afterwards, to wit, on the 14th day of October, A. D. 1918, came the defendants, by their attorneys, and filed in the office of the clerk of said court their certain demurrer to the first and second counts in said indictment and to each of them separately, in said cause, which said demurrer is clothed in the words and figures following, to wit:

District Court of United States, Southern District of Ohio, Western Division.

No. 1198.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* AUGUST FERGER, THOMAS M. DUGAN, AND Robert H. Rasch, defendants.	Demurrer to the first and second counts in said indictment and to each of them separately.

Now comes the defendants, August Ferger, Thomas M. Dugan, and Robert H. Rasch, and demur to the indictment herein and to each count thereof separately for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America, and particularly against the act of Congress entitled "An act relating to bills of lading in interstate
66 and foreign commerce," approved August 29, 1916, in the following particulars, to wit:

First. That said act of Congress entitled "An act relating to bills of lading in interstate and foreign commerce," approved August 29, 1916, is unconstitutional and void, especially section 41 of said act in so far as it attempts to make it a crime and punish any person who forges or counterfeits a bill of lading where no shipment from one State to another is made or intended.

Second. That said act can only apply to bills of lading representing actual shipments of merchandise or commerce between the States. If it is intended to apply to wholly fictitious shipments, it is unconstitutional and void so far as said fictitious shipments are concerned, because the power of Congress to legislate upon this subject matter is based wholly and solely upon the commercial clause of the Constitution, and if there is no commerce, there is no jurisdiction.

JOHN C. HERMANN,
SHERMAN T. MCPHERSON,
Attorneys for Defendants.

And afterwards, to wit, on the same day, there was filed in the office of the clerk of said court, a certain opinion on motions to quash and on demurrers, in said cause, which said opinion is clothed in the words and figures following, to wit:

67 In the District Court of the United States, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AUGUST FERGER AND THOMAS M. DUGAN, defendants. } No. 1198. Criminal.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
AUGUST FERGER, THOMAS M. DUGAN, AND Robert H. Rasch, defendants. } No. 1199. Criminal.

Heard on motions to quash and on demurrers.

To the respective indictments in the above cases the defendants therein filed motions to quash and demurrers.

Among others, the question is raised whether or not, as applicable to the facts stated in the indictments, the Congress had power to enact section 41 of the act relating to bills of lading in interstate and foreign commerce, approved August 29, 1916 (39 Stat. at Large, 538). If that question is decided in the negative, then all of the other questions become unimportant.

68 Section 41 reads:

"That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints, or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed, or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both."

Case No. 1198 contains twenty-four counts, the odd counts charging defendants with falsely making, forging, and counterfeiting the certain bill of lading in each count set forth at length, with

intent to defraud, and in the same counts the defendants are charged with uttering and publishing, and aiding and assisting in uttering and publishing, the falsely forged and counterfeited bill of lading in each count set forth.

The even-numbered counts charge the defendants with having uttered and published as true and genuine the falsely forged and counterfeited bill of lading, a copy of which is set forth in each count, knowing it to be falsely forged and counterfeited, with intent to defraud, and that they did negotiate and transfer for value, and aided and assisted in negotiating and transferring for value,
69 the falsely forged and counterfeited bills of lading, with the Second National Bank of Cincinnati, and charges that the falsely forged and counterfeited bills of lading then and there contained a false statement as to the receipt of the goods described therein, to wit, 80,000 pounds of corn.

Case No. 1199 contains one count charging the defendants named with conspiring to commit an offense against the United States, in that they agreed, with intent to defraud, to falsely make, forge, and counterfeit, and aid in falsely making, forging, and counterfeiting, bills of lading purporting to represent goods received at Fountaintown, in the State of Indiana, for shipment to Cincinnati, in the State of Ohio, and to utter and publish, and aid and assist in uttering and publishing, the falsely made, forged, and counterfeited bills of lading, knowing them to be falsely made, forged, and counterfeited, and to negotiate and transfer for value the falsely made, forged, and counterfeited bills of lading, which falsely made, forged, and counterfeited bills of lading were to contain false representations as to the receipt of goods for shipment, and that they, in furtherance of, and to effect the object of their conspiracy, negotiated for and secured from the Second National Bank of Cincinnati a loan of $22,000 for the benefit of the Ferger Grain Company, of Cincinnati, and of the defendants, being interested as officers, stockholders, and employees, and that the defendants gave as evidence of that indebtedness
70 a demand note, copy of which is incorporated in the indictment.

The indictment further charges that to further effect the purpose of the conspiracy, the defendants negotiated, transferred for value and delivered, and caused to be negotiated, transferred for value, and delivered to the Second National Bank of Cincinnati, as collateral security for such loan, twelve bills of lading, falsely made, forged, and counterfeited, containing false representations as to receipt of goods, which bills of lading were of the standard form of order bill of lading approved by the Interstate Commerce Commission by Order No. 877 of June 27, 1908, all purporting to be issued by the Cincinnati, Hamilton and Dayton Railway Company, and which contained the following false statements and information: Dated at Fountaintown, Indiana, on the various dates set forth in the indictment. Received from W. D. Springer; consigned to order of W. D. Springer; destination, Cincinnati, Ohio; notify Ferger Grain Company, of Cincinnati, Ohio.

Route C. H. & D. "Description of contents and special marks: Corn, weight 80,000 pounds," the name of the agent being stated as W. E. Sheldon, and bearing the endorsements of W. D. Springer and the Ferger Grain Company, Thomas M. Dugan, secretary.

It was agreed at the argument and assumed in the briefs of counsel that the so-called bills of lading were fictitious, in that there was no actual consignor or consignee, and that they did not relate to any shipment or contemplated shipment of corn whatsoever. This fact so agreed upon in open court is to be read into the indictments.

71 Such power as Congress had to enact section 41 is derived from the commerce clause of the Constitution.

Counsel for defendants contend that there must be some commerce actually existing, or at least in contemplation, to be regulated, so as to bring into exercise the power delegated to the Congress by the Constitution.

The Government claims that since, under the commerce clause, Congress has power over the instrumentalities through which interstate commerce is carried on and may prescribe a uniform bill of lading, that it necessarily has power to prevent the imposition on the public of papers purporting to be genuine bills of lading, although they in fact represent no shipper or consignee or goods to be shipped in interstate commerce, and are wholly fictitious.

Although the exercise of power of the Congress under the commerce clause has been held to include acts whose purpose involved immorality, and thus contrary to good morals and the public welfare, such as the Lottery Case (188 U. S., 321) and the White Slave Cases (227 U. S., 308, et seq.), yet in each of these illustrations the foundation of the exercise of the power was the existence in the one case of interstate shipment of lottery tickets, and in the others the interstate transportation of persons. In these the exercise of police power was incidental only.

A bill of lading is nothing more than a contract and a receipt. Pollard v. Vinton, 105 U. S., 7, 8. In that case Mr. Justice Miller said:

72 "The receipt of the goods lies at the foundation of the contract to carry and deliver. If no goods are actually received, there can be no valid contract to carry or to deliver."

These bogus bills of lading were nothing but pieces of paper, fraudulently inscribed to represent a real contract between real people and the actual receipt of goods for interstate shipment. They were not receipts for goods to be shipped; they did not affect interstate commerce, directly or indirectly; they did not obstruct it or interfere with it in any manner, and had nothing whatsoever to do with it, or with any existing instrumentality of it. That they were inscribed so as to purport to relate to interstate shipments was nothing else than a fraud upon such persons as innocently took them, as collateral or otherwise. The execution of them and their use for obtaining money under false pretenses was nothing other than a crime

of the kind cognizable by the criminal legislation of the States, and a matter with which the Congress, in the exercise of its power to regulate commerce, is not concerned.

The principle that our Federal Government is one of enumerated powers is universally admitted. (Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat., *316, *405). The powers possessed by the National Government are only such as have been delegated to it.

The States have all power but such as they have surrendered.
73 (Gilman v. Philadelphia, 3 Wall., 713, 725). Which is but stating what the Constitution declares in Article IX;

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

And in Article X:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

The States have not surrendered, and therefore retain, their power to enact laws to prevent and punish such acts as these defendants are charged with, and have not delegated to the Congress the power to pass laws to prevent and punish acts, however immoral, which have no relation whatever to the subjects matter included within any of the powers delegated. "In the American constitutional system, the power to establish the ordinary regulations of police has been left with the individual States, and cannot be assumed by the National Government," says Judge Cooley. Const. Lim. 574. See Patterson v. Kentucky, 97 U. S., 501, 503; Keller v. U. S., 213 U. S., 138, 144.

It was said in U. S. v. Knight, 156 U. S., 1, 13:

"The regulation of commerce applied to the subjects of commerce, and not to matters of internal police."

We are not discussing the forging or counterfeiting of an existing, genuine bill of lading, having to do with an actual shipment made,
or about to be made, or even in contemplation, and have
74 nothing to say about the validity of section 41 with respect thereto.

In all of the definitions the Supreme Court has given to "interstate commerce," beginning with Gibbons v. Ogden, 9 Wheat., 1, *197, and up to the Child Labor Case (opinion delivered June 3, 1918), that which was described was something tangible, or, if not tangible as in the Telegraph Cases (96 U. S., 1; 105 U. S., 460; 122 U. S., 347; 162 U. S., 650, 654) was something, even if only "ideas, wishes, orders, and intelligence" (188 U. S., 321, 351, 352) carried from one State to another by wire, that was actually transmitted across State borders, or had definite relation to one or the other of these. It would be useless to refer at length to all or any considerable number of the many cases.

While in the nature of things the Supreme Court could not make, or, at any rate, would not attempt to make, in any case, a definition

so comprehensive as to cover all situations, yet from what the court has said, and on principle, the inevitable deduction must be made that acts such as are described in the indictments, which constitute in themselves a mere fraud; acts which do not involve any real transaction whatever, either as to parties or subject matter, although purporting to include both, would not be regarded by the Supreme Court from any standpoint whatever, as interstate commerce, or as having any relation thereto under the commerce clause. Such legislation is not a regulation of commerce between the States.

Counsel for the Government say that the laws providing
75 for the punishment of counterfeiting and uttering and publishing counterfeit coin and currency of the United States present a complete analogy. There is no analogy. Under clause 5 of section 8, article 1 of the Constitution, power is delegated to the Congress to coin money, and by clause 6 of section 8, to provide for punishment for counterfeiting the securities and current coin of the United States.

The question made at the beginning of this discussion must be decided in favor of the defendants, and the holding made, that the Congress has not the power, under the commerce clause, to prescribe a punishment under the circumstances of this case, and if the Congress has sought to do so, the attempt is futile, because without authority.

An order may be taken dismissing these indictments.

(Signed) HOLLISTER, *District Judge.*

For the Government: Stuart R. Bolin, U. S. attorney; Edward K. Bruce, Asst. U. S. attorney.

For the defendants: Sherman T. McPherson, John C. Hermann.

76 *Order sustaining demurrer.*

And afterwards, to wit, on the 13th day of November, A. D. 1918, an entry was made on the journal of said court, in said cause, which said entry is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AUGUST FERGER AND THOMAS M. DUGAN, defendants. } No. 1198.

This day this cause came to be heard upon the demurrer filed by the defendants to the indictment. After being argued by counsel and the court being fully advised in the premises, finds said demurrer well taken and sustains the same.

It is further ordered that the indictment be dismissed and the defendants go hence without day. To all of which the United States, by the United States district attorney, excepts.

And afterwards, to wit, on the 6th day of December, A. D. 1918, came the United States of America, by Stuart R. Bolin, its attorney in and for the southern district of Ohio, and filed in the office of the clerk of said court a certain petition for writ of error in said cause, which said petition for writ of error is clothed in the words and figures following, to wit:

77 In the District Court of the United States, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AUGUST FERGER AND THOMAS M. DUGAN AND Robert H. Rasch, defendants.
No. 1198. Criminal.

Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the thirteenth day of November, 1918, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto and in connection therewith in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will appear more in detail from the assignment of errors which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States, for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio, Western Division.

78 And on the same day came the United States of America, by Stuart R. Bolin, its attorney in and for the Southern District of Ohio, and filed in the office of the clerk of said court a certain assignment of errors in said cause, which said assignment of errors is clothed in the words and figures following, to wit:

79 In the District Court of the United States, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AUGUST FERGER AND THOMAS M. DUGAN AND Robert H. Rasch, defendants.
No. 1198. Criminal.

Assignment of errors.

The plaintiff in this action, with its petition for writ of error, makes the following assignment of errors, which it avers occurred in the decision of the cause, to wit: The learned court erred—

1. In sustaining the demurrer to the indictment on the ground that the statute upon which the indictment is founded (act of August 29, 1916, ch. 415, 39 Stat., 538) is invalid.

2. In sustaining the motion to quash the indictment on the ground that the statute upon which the indictment is founded is invalid.

3. In holding in the decision sustaining the demurrer and the motion to quash that Congress had no power to enact section 41 of the act of August 29, 1916, in so far as it prohibits any person from knowingly or with intent to defraud falsely making, forging, or counterfeiting a bill of lading purporting to represent goods
80 received for shipment among the several States; or with like intent uttering or publishing as true and genuine any such falsely forged or counterfeited bill of lading knowing it to be falsely forged or counterfeited; or with aiding in making, forging, uttering, or publishing the same; or with issuing or aiding in issuing or procuring the issue of, or with negotiating or transferring for value such a bill which contains a false statement as to the receipt of the goods or as to any other matter, where there is no actual consignor or consignee, and no actual shipment is made or contemplated.

STUART R. BOLIN,
United States Attorney, Southern District of Ohio, Western Division.

Order allowing writ of error.

And on the same day an entry was made on the journal of said court in said cause, clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
AUGUST FERGER, THOMAS M. DUGAN, AND Robert H. Rasch.
No. 1198.

This day came the United States attorney for the Southern District of Ohio, on behalf of the plaintiff and presented for allowance

a petition for writ of error and an assignment of errors accompanying the same, and upon consideration of the same,

It is hereby ordered that said petition be and the same hereby is allowed, and that a writ of error to the Supreme Court of the United States shall issue.

81 And on the same day came the United States of America, by Stuart R. Bolin, its attorney in and for the Southern District of Ohio, and filed in the office of the clerk of said court a certain præcipe, which said præcipe is clothed in the words and figures following, to wit:

82 In the District Court of the United States, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
AUGUST FERGER AND THOMAS M. DUGAN AND Robert H. Rasch, defendants.
} No. 1198. Criminal.

Præcipe.

To B. E. DILLEY,
Clerk of the United States District Court,
For the Southern District of Ohio.

Please prepare a certificate and transcript of all pleadings and papers, together with the docket and journal entries in this cause, including a copy of the decision, judgment, and opinion of the court herein, to be filed in the Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney, Southern District of Ohio, Western Division.

83 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA
vs.
AUGUST FERGER, THOMAS M. DUGAN, and Robert H. Rasch.
} No. 1198. Violation of act of August 26, 1916.

Docket entries.

Oct. 30, 1917. Indictment filed.
Oct. 31, 1917. Præcipe for capias for defendants Ferger, Dugan & Rasch filed & capias issued.
Oct. " " Defendant Ferger arraigned; plea of not guilty entered; bond $5000.00.
" " " Defendant Dugan arraigned; plea of not guilty entered; bond $5000.00;

"	"	"	Defendant Rasch arraigned; plea of not guilty entered; bond $2500.00;
"	"	"	Recognizance of defendant Ferger taken & filed.
"	"	"	Recognizance of defendant Dugan taken & filed.
"	"	"	Recognizance of defendant Rasch taken & filed.
Nov. 10,		"	Capias returned & filed endorsed as follows: "Received this writ at Cincinnati, Ohio, on October 31, 1917, and on the same day executed same by taking the bodies of the within named August Ferger, Thomas M. Dugan, and Robert H. Rasch into custody and have now their bodies before court as within commanded. The said defendants having been arraigned before court were released upon bond. M. DEVANNEY, *U. S. Marshal, S. D. O.* By E. R. KENDIG, *Deputy*, By J. NORRISH, *Deputy.*
Nov. 27, 1917.			Motion of defendants to quash the indictment & each count thereof filed.
March 2, 1918.			Motion of defendants to quash the indictment & each count thereof argued and submitted.
Oct. 14, 1918.			Demurrer to the first & second counts in said indictment and to each of them separately filed.
"	"	"	Opinion of Judge Hollister dismissing indictment, filed.
Nov. 13,		"	Order sustaining demurrer & dismissing indictment filed.
Dec. 6, 1918.			Petition for writ of error filed.
"	"	"	Assignment of errors filed.
"	"	"	Order allowing writ of error.
"	"	"	Writ of error issued.
"	"	"	Citation issued.
"	"	"	Citation returned and filed, service acknowledged.
"	"	"	Præcipe for record filed.

84 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true, correct, and complete transcript of the docket entries, the record and proceedings, and the opinion of the court, in case No. 1198, The United States of America, plaintiff, vs. August Ferger, Thomas M. Dugan, and Robert H. Rasch, defendants, as the same appears on file and of record in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this seventh day of December, A. D. 1918.

[SEAL.]

B. E. DILLEY,
Clerk.
By HARRY F. RABE,
Deputy.

84 THE UNITED STATES OF AMERICA,

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of Ohio, Western Division, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between The United States of America and August Ferger, and Thomas M. Dugan, and Robert H. Rasch a manifest error hath happened, to the great damage of the said The United States of America as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 6th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.]

B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.

Allowed by Hollister, district judge of the United States for the Southern District of Ohio.

86 UNITED STATES OF AMERICA, *ss:*

To August Ferger and Thomas M. Dugan, and Robert H. Rasch, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the South-

ern District of Ohio, Western Division, wherein The United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 6th day of December, in the year of our Lord one thousand nine hundred and eighteen.

HOLLISTER,
District Judge of the United States,
for the Southern District of Ohio.

87 Service of the within citation is hereby acknowledged this 6th day of of December, A. D. 1918.

JOHN C. HERMANN,
SHERMAN T. MCPHERSON,
Attorneys for August Ferger, Thomas M. Dugan, and Robt. H. Rasch, Defendants in Error.

88 *Stipulation.*

In the Supreme Court of the United States, October Term, 1918.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
v.
AUGUST FERGER ET AL., DEFENDANTS IN ERROR. } No. 1198.

It was agreed on the part of counsel for the Government in the argument in the court below that all of the so-called bills of lading mentioned in the indictment were fictitious, in that there was no actual consignor or consignee, and that they did not relate to any shipment or contemplated shipment whatsoever. The same is agreed upon here, which said agreement is to be treated by this court as a bill of particulars filed to the indictment.

ALEX. C. KING,
Counsel for Plaintiff in Error.
JOHN C. HERMANN,
SHERMAN T. MCPHERSON,
Counsel for Defendants in Error.

89 (Endorsed:) File No. 26862. Supreme Court U. S. October term, 1918. Term No. 776. The United States, plaintiff in error, vs. August Ferger et al. Stipulation as to facts, etc. Filed Dec. 23, 1918.

90 In the Supreme Court of the United States. October Term, 1918.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
AUGUST FERGER ET AL. } No. ——.

Stipulation as to Printing of the Record.

It is hereby stipulated by counsel for the parties to the above-entitled cause that, as the opinion of the district court appears in the transcript of the record in case No. 1198, it shall be omitted in the printing of the transcript of the record in case No. 1199.

ALEX. C. KING,
Solicitor General.
JOHN C. HERMANN,
SHERMAN T. MCPHERSON,
Counsel for Defendants in Error.

91 (Endorsed:) File No. 26862. Supreme Court U. S. October term, 1918. Term No. 776. The United States, plaintiff in error, vs. August Ferger et al. Stipulation to omit part of record in printing. Filed Dec. 23, 1918.

(Endorsed on cover:) File No. 26862, S. Ohio, D. C. U. S. Term No. 776. The United States of America, Plaintiff in Error, vs. August Ferger, Thomas M. Dugan, and Robert H. Rasch. Filed December 12th, 1918. File No. 26862.

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